

FEE PROCESSING FORM

PR 93-35

FCC
USE
ONLY

FCC/MELLON JAN 26 1994

01-28-94 8300360 001

Please read instructions on back of this form before completing it. Section I MUST be completed. If you are applying for concurrent actions which require you to list more than one Fee Type Code, you must also complete Section II. This form must accompany all payments. Only one Fee Processing Form may be submitted per application or filing. Please type or print legibly. All required blocks must be completed or application/filing will be returned without action.

SECTION I

APPLICANT NAME (Last, first, middle initial)

METROCALL, INC.

MAILING ADDRESS (Line 1) (Maximum 35 characters - refer to instruction (2) on reverse of form)

c/o Frederick M. Joyce, Esq., Joyce & Jacobs

MAILING ADDRESS (Line 2) (if required) (Maximum 35 characters)

2300 M Street, N.W., Suite 130

CITY

Washington

STATE OR COUNTRY (if foreign address)

D.C.

ZIP CODE

20037

CALL SIGN

n/a

OTHER FCC IDENTIFIER

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in FCC Fee Filing Guides. Enter in Column (B) the Fee Multiple, if applicable. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number entered in Column (B), if any.

(A)

(B)

(C)

(1)

FEE TYPE CODE

P D W

FEE MULTIPLE
(if required)

FEE DUE FOR FEE TYPE
CODE IN COLUMN (A)

\$ 105.00

FOR FCC USE ONLY

SECTION II

— To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

(A)

(B)

(C)

FEE TYPE CODE

FEE MULTIPLE
(if required)

FEE DUE FOR FEE TYPE
CODE IN COLUMN (A)

FOR FCC USE ONLY

(2)

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(3)

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(4)

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(5)

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\$	
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ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (5), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.

TOTAL AMOUNT REMITTED
WITH THIS APPLICATION
OR FILING

\$ 105.00

FOR FCC USE ONLY

105.00

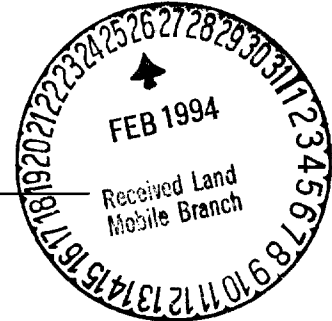
FCC/MELLON JAN 26 1994

Before the
FEDERAL COMMUNICATIONS COMMISSION
 WASHINGTON, D.C. 20554

In the matter of:)

Application of Metrocall, Inc.)
 for exclusive use of 929 MHz)
 Private Carrier Paging freq-)
 uency at various locations)
 throughout the United States.)

93-35
 File No. _____



To: Chief, Land Mobile & Microwave Division

REQUEST FOR RULE WAIVER

Metrocall, Inc., through its attorneys, and pursuant to Sections 1.931(a) and 90.151 of the Commission's Rules, 47 C.F.R. §§ 1.931(a) and 90.151, hereby requests a waiver of Sections 90.495(a) and/or 90.496 of the Commission's Rules, 47 C.F.R. §§ 90.495(a), 90.496, as amended in Amendment of the Commission's Rules to Provide Channel Exclusivity to Qualified Private Paging Systems at 929-930 MHz, Report and Order, PR Docket No. 93-35, 58 Fed. Reg. 62289 (November 26, 1993) (hereinafter, the "Order"). The purpose of this waiver request is to allow Metrocall two years to convert certain of its multifrequency transmitters to "dedicated" or "single use" transmitters, so as to comply with the nationwide private carrier paging ("PCP") exclusivity rules. In support of this request, the following is respectfully shown:

1. Factual Background.

Metrocall filed comments in this PCP rulemaking proceeding, and has been an active participant in industry and FCC meetings aimed at fashioning PCP exclusivity rules in the public interest.

Metrocall is truly the paradigm that the FCC's exclusivity rules were meant to promote. It is a predominantly family-owned business, not owned by a telephone company. Just a few months ago, Metrocall successfully sold shares of its stock to the public in an initial public offering.

Metrocall is one of the smallest paging companies that offers nationwide services, yet, conversely, it is also one of the only profitable paging companies among the top-20 in the nation. Metrocall provides high quality, yet competitively priced services, and it has done so with a 100% FCC rule compliance record since its inception. In short, Metrocall represents the entrepreneurial "ideal" that the FCC has so often encouraged through rule waiver grants. See e.g., Fleet Call, Inc., 6 FCC Rcd. 1533 (1991) (wherein the Commission granted certain waivers of Part 90 of the Rules to promote "Enhanced Specialized Mobile Radio System" services).

The FCC's proposal to adopt a form of exclusivity for 900 MHz PCP operations coincided with Metrocall's growth and subscriber demands. In the past year or two, Metrocall determined that many of its subscribers required nationwide or regional coverage extending beyond Metrocall's existing coverage areas. Since the radio common carrier ("RCC") frequencies for which Metrocall had previously been authorized were not available nationwide, Metrocall applied for, and was granted, PCP licenses for the 929.5125 MHz frequency, pursuant to Part 90 of the Commission's Rules.

Due to subscriber demand for its services, and scarcity of nationwide frequencies, Metrocall simply could not wait for this rulemaking proceeding to run its course before commencing construction of its nationwide network. Still, Metrocall strove to build its nationwide PCP network in accord with the rules that were proposed by the FCC in its Notice of Proposed Rulemaking, PR Docket 93-35, 8 FCC Rcd. 2227 (1993) (the "Notice").

Mindful of those proposed Rules, Metrocall applied for and received authorizations for over 800 PCP transmitter sites nationwide, and it applied for more sites in anticipation of expansion of that nationwide network.¹ At a cost of millions of dollars, Metrocall constructed over 100 PCP transmitters nationwide; these transmitters are all capable of operating at an output power of at least 100 watts. Through equipment sharing arrangements with other licensees, which the Rules encourage, Metrocall has already activated nationwide PCP service for its subscribers in all of the "regions" necessary to obtain nationwide exclusivity. In short, in most every material respect except one, Metrocall meets the qualifications for nationwide exclusivity. See 47 C.F.R. § 90.495(a)(3).

The one exception Metrocall faces is that the FCC, in adopting the exclusivity rules, determined that licensees could not count shared, multifrequency transmitters as "one's own" for

¹ Metrocall will gladly provide the Bureau with a list of these call signs and authorizations, if the Bureau deems it necessary.

purposes of exclusivity (if the transmitter owner has done the same). See 47 C.F.R. § 90.495(a)(5). Consequently, Metrocall requires this temporary, two year waiver of the multifrequency rule, or, in the alternative, Metrocall will need the "slow growth" option, in order to convert approximately 200 transmitters from multifrequency to "single use" transmitters.

2. Nature of the Waiver Request.

Metrocall respectfully requests a waiver of Section 90.495 (a)(5) of the Commission's Rules for a period of no more than two years from the date that Metrocall's 929.5125 MHz frequency licenses are designated as "exclusive."² Metrocall proposes that in the first year following that exclusivity designation it will convert 100 transmitters from multifrequency use to single use. In the second year, it will convert an additional 100 transmitters, so that by the end of the second year of this waiver, Metrocall will have complied with the 300 "single use" transmitter rule in all the applicable regions.

In the alternative, Metrocall requests that it be granted up to two years, under the new Rule Section 90.496, the "Extended implementation schedule," to place the same number of single-use transmitters into service. See 47 C.F.R. § 90.496.³ The same

² Apparently, a similar waiver request was recently submitted to the FCC by Paging PacTel Paging and its affiliates.

³ According to a literal reading of the Order, the slow growth rules would not appear to apply to existing PCP operators, hence, this rule waiver would be necessary to request the slow

construction timetable would apply. Since Metrocall has already constructed a nationwide network, albeit with multifrequency transmitters, the "performance bond" requirement should not apply. Nevertheless, Metrocall would gladly provide the Bureau with reasonable assurances of its ability to finance the construction of the additional single-use transmitters, at the Bureau's request.

3. Special Circumstances Warrant a Waiver.

The Commission is empowered to grant waivers of its Rules. "The agency's discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances." WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C.Cir. 1969)(citations omitted). That authority is extended to the Common Carrier and Private Radio Bureaus pursuant to Sections 0.291 and 0.331 of the Commission's Rules. 47 C.F.R. §§ 0.291, 0.331.

Metrocall's case certainly presents such "unique circumstances." Having played by the rules as it knew them, Metrocall's multi-million dollar investment now stands at considerable risk unless it can receive a brief extension of time in which to comply with the unexpected "single-use" transmitter

growth option. Metrocall has asked the FCC for clarification or reconsideration of the slow growth rule in a previously filed Petition for Reconsideration.

rule.

Absent a grant of this waiver request, Metrocall faces the following daunting task in the next eight months' time: Metrocall must buy at least 200 transmitters (at a cost of approximately \$6 million, assuming the equipment can be manufactured and delivered in a timely manner), lease additional site space for each of these transmitters (approximately \$500 per month per transmitter per year, that is, \$1.2 million per year, assuming Metrocall can timely find such sites), and hire technicians to work night and day to install these transmitters nationwide in less than eight month's time (assuming it can find such technicians, while so many other nationwide PCP licensees struggle to meet the same eight month deadlines).

The penalties to Metrocall, and its subscribers, if it cannot meet this formidable construction timetable are extreme: despite having already invested millions of dollars into the 929.5125 MHz frequency, and despite having begun to provide nationwide services over that frequency, Metrocall could forfeit its nationwide exclusivity rights on that frequency. Consequently, all the problems that the exclusivity rules were intended to avoid: co-channel and shared channel interference problems, outdated technologies, and frequency hoarding; will resurface on this frequency, absent this waiver. Such an unfortunate and unnecessary squandering of Metrocall's significant investment in this frequency is squarely at odds with the intent behind the exclusivity rules.

4. The Public Interest Warrants a Grant of this Waiver.

The FCC originally stated that the underlying premise of the PCP exclusivity rules was to promote investment in technology and system expansion. (Notice at ¶ 16). Metrocall has already proven to be one of the leading pioneers in meeting those worthy policy objectives. Metrocall has invested considerable sums of time and money into developing the 929.5125 frequency; it has made this frequency available on a region-wide and nationwide basis, and it is providing the latest, state-of-the-art services to its paging customers over this PCP network. Metrocall did all of this in a remarkably brief period of time, less than one year. No other "new applicant" will be able to match what Metrocall has done on this frequency in such short order.

Having fulfilled the FCC's objectives in developing this 900 MHz PCP channel, Metrocall now merely asks the FCC for a brief two years in which to comply with the unexpected "wrinkle" in the exclusivity rules: the single-use transmitter rule. During that time period, there would be no perceptible difference in services available to the public; the 929.5125 frequency is already being utilized to its fullest potential.

If, by the end of that two year period, Metrocall should fail to install an additional 200 transmitters, then, to the extent that the frequency coordinator deems it appropriate, new applicants could request a license on this particular frequency where it has not been designated as "exclusive."

Absent a grant of this request, Metrocall probably will not

be able to meet the 300 single-use transmitter requirement in eight months' time. Instead, soon thereafter its subscribers could begin to suffer harmful interference from shared-channel licensees. Metrocall is a relatively small company, with limited manpower; it is simply unreasonable to expect it to be able to triple the size of its nationwide network in so little time, even if the manufacturers could deliver the necessary equipment so quickly.

In sum, the unique circumstances and extraordinary costs entailed in the implementation of Metrocall's nationwide operations justify a reasonable extension of the usual eight month construction period in which to construct a total of 300 single-use transmitters. A grant of this waiver would substantially expedite the initiation of nationwide and regional paging services to the public, eliminate potentially harmful interference to Metrocall's subscribers, and protect Metrocall from financial ruin. This rule waiver would be consistent with the spirit of the exclusivity rules, and it is eminently in the public's interest.

Conclusion

For all the foregoing reasons, Metrocall respectfully requests that the Commission grant it a waiver of 47 C.F.R. § 90.495 (a)(5) and/or 90.496, to grant Metrocall two years to comply with the 300 "single-use" transmitter rule. If there are any questions concerning this request, please contact Metrocall's undersigned attorneys.

Respectfully submitted,

METROCALL, INC.

By: 

Frederick M. Joyce
Jill M. Lyon
Christine McLaughlin
Its Counsel

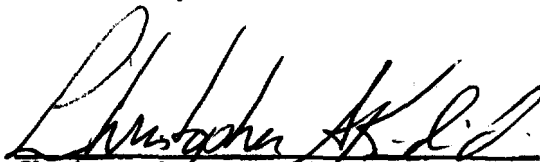
JOYCE & JACOBS
2300 M Street, N.W.
Suite 130
Washington, D.C. 20037
(202) 457-0100

Date: January 26, 1994

DECLARATION OF CHRISTOPHER A. KIDD

I, Christopher A. Kidd, do hereby declare under penalty of perjury as follows:

1. I am over the age of 21, and am competent and authorized to make this Declaration in support of Metrocall, Inc.'s "Request for Waiver."
2. I am the Chief Executive Officer and Vice President of Metrocall.
3. I have reviewed the foregoing Request for Waiver and, except for those facts of which the FCC may take administrative notice, the facts set forth therein are true and correct, to the best of my knowledge, information and belief.


Christopher A. Kidd, C.E.O.

Date:

Dec 31, 1993